

1 Tiffany G. Jensen, Esq. (SBN: 256842)
2 tiffany@westcoastlitigation.com
3 Joshua B. Swigart, Esq. (SBN: 225557)
josh@westcoastlitigation.com
4 **Hyde & Swigart**
5 411 Camino Del Rio South, Suite 301
San Diego, CA 92108-3551
Telephone: (619) 233-7770
Facsimile: (619) 297-1022

RECD
09 AUG 13 PM 3:27

7 Attorneys for the Plaintiff
8 Heather Rowell

9
10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

13 Heather Rowell, 14 v. 15 Plaintiff, 16 17 Law Offices of Robert B. Serian, 18 Defendant. 19	20 Case Number: 21 '09 CV 1770 JM RBB Complaint For Damages 22 Jury Trial Demanded 23
--	---

21 **INTRODUCTION**

- 22 1. The United States Congress has found abundant evidence of the use of
23 abusive, deceptive, and unfair debt collection practices by many debt
24 collectors, and has determined that abusive debt collection practices
contribute to the number of personal bankruptcies, to marital instability, to the
loss of jobs, and to invasions of individual privacy. Congress wrote the Fair
25 Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (hereinafter
26 "FDCPA"), to eliminate abusive debt collection practices by debt collectors,
27
28

- 1 to insure that those debt collectors who refrain from using abusive debt
2 collection practices are not competitively disadvantaged, and to promote
3 consistent State action to protect consumers against debt collection abuses.
- 4 2. The California legislature has determined that the banking and credit system
5 and grantors of credit to consumers are dependent upon the collection of just
6 and owing debts and that unfair or deceptive collection practices undermine
7 the public confidence that is essential to the continued functioning of the
8 banking and credit system and sound extensions of credit to consumers. The
9 Legislature has further determined that there is a need to ensure that debt
10 collectors exercise this responsibility with fairness, honesty and due regard
11 for the debtor's rights and that debt collectors must be prohibited from
12 engaging in unfair or deceptive acts or practices.
- 13 3. Heather Rowell, (Plaintiff), through Plaintiff's attorneys, brings this action to
14 challenge the actions of Law Offices of Robert B. Serian, ("Defendant"), with
15 regard to attempts by Defendant to unlawfully and abusively collect a debt
16 allegedly owed by Plaintiff, and this conduct caused Plaintiff damages.
- 17 4. Plaintiff makes these allegations on information and belief, with the exception
18 of those allegations that pertain to a plaintiff, or to a plaintiff's counsel, which
19 Plaintiff alleges on personal knowledge.
- 20 5. While many violations are described below with specificity, this Complaint
21 alleges violations of the statutes cited in their entirety.
- 22 6. Unless otherwise stated, Plaintiff alleges that any violations by Defendant
23 were knowing and intentional, and that Defendant did not maintain
24 procedures reasonably adapted to avoid any such violation.

HYDE & SWIGART
San Diego, California

JURISDICTION AND VENUE

- 2 7. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331, 15 U.S.C. §
3 1692(k), and 28 U.S.C. § 1367 for supplemental state claims.
4 8. This action arises out of Defendant's violations of the Fair Debt Collection
5 Practices Act, 15 U.S.C. §§ 1692 et seq. ("FDCPA") and the Rosenthal Fair
6 Debt Collection Practices Act, California Civil Code §§ 1788-1788.32
7 ("RFDCPA").
8 9. Because Defendant does business within the State of California, personal
9 jurisdiction is established.
10 10. Venue is proper pursuant to 28 U.S.C. § 1391.

PARTIES

- 12 11. Plaintiff is a natural person who resides in the City of Santa Ysabel , County
13 of San Diego, State of California.

14 12. Defendant is located in the City of Valencia, the County of Los Angeles, and
15 the State of California.

16 13. Plaintiff is obligated or allegedly obligated to pay a debt, and is a “consumer”
17 as that term is defined by 15 U.S.C. § 1692a(3).

18 14. Defendant is a person who uses an instrumentality of interstate commerce or
19 the mails in a business the principal purpose of which is the collection of
20 debts, or who regularly collects or attempts to collect, directly or indirectly,
21 debts owed or due or asserted to be owed or due another and is therefore a
22 debt collector as that phrase is defined by 15 U.S.C. § 1692a(6).

23 15. Plaintiff is a natural person from whom a debt collector sought to collect a
24 consumer debt which was due and owing or alleged to be due and owing from
25 Plaintiff, and is a “debtor” as that term is defined by California Civil Code §
26 1788.2(h).

16. Defendant, in the ordinary course of business, regularly, on behalf of himself, herself, or others, engages in debt collection as that term is defined by California Civil Code § 1788.2(b), is therefore a debt collector as that term is defined by California Civil Code § 1788.2(c).
 17. This case involves money, property or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction. As such, this action arises out of a consumer debt and “consumer credit” as those terms are defined by Cal. Civ. Code § 1788.2(f).

FACTUAL ALLEGATIONS

18. At all times relevant to this matter, Plaintiff was an individual residing within the State of California.
 19. At all times relevant, Defendant conducted business within the State of California.
 20. Sometime before December 26, 2007, Plaintiff is alleged to have incurred certain financial obligations.
 21. These financial obligations were primarily for personal, family or household purposes and are therefore a “debt” as that term is defined by 15 U.S.C. §1692a(5).
 22. These alleged obligations were money, property, or their equivalent, which is due or owing, or alleged to be due or owing, from a natural person to another person and are therefore a “debt” as that term is defined by California Civil Code §1788.2(d), and a “consumer debt” as that term is defined by California Civil Code §1788.2(f).
 23. Sometime thereafter, but before December 26, 2007, Plaintiff allegedly fell behind in the payments allegedly owed on the alleged debt. Plaintiff currently takes no position as to the validity of this alleged debt.
 24. Subsequently, but before December 26, 2007, the alleged debt was assigned, placed, or otherwise transferred, to Defendant for collection.

- 1 25. On or about December 26, 2007, Defendant telephoned Plaintiff and
2 demanded payment of the alleged debt.
- 3 26. This communication to Plaintiff was a “communication” as that term is
4 defined by 15 U.S.C. § 1692a(2), and an “initial communication” consistent
5 with 15 U.S.C. § 1692g(a).
- 6 27. This communication was a “debt collection” as Cal. Civ. Code 1788.2(b)
7 defines that phrase, and an “initial communication” consistent with Cal. Civ.
8 Code § 1812.700(b).
- 9 28. Subsequently, but within the thirty-day period described in 15 U.S.C. §
10 1692(a), Plaintiff notified Defendant in writing, that this alleged debt, or some
11 portion of it, was disputed. Plaintiff sent this letter via certified mail, return
12 receipt, which was received Defendant’s representative, “M. Young.”
- 13 29. Defendant continued its attempts to collect the alleged debt by telephone
14 despite Plaintiff’s letter disputing the alleged debt and demanding that
15 Defendant cease telephone contact with Plaintiff.
- 16 30. From approximately December 26, 2007, to August 25, 2008, Defendant
17 contacted Plaintiff by telephone in excess of one hundred twenty (120) times.
18 Many of the calls were made by Defendant’s representatives, “Mr. Harris,”
19 and “Jason.”
- 20 31. Plaintiff became very frightened of Plaintiff’s illegal tactics as Defendant’s
21 representatives, on numerous occasions, threatened to send people to
22 Plaintiff’s home because it “knew where she lived, and knew people who
23 could remind her of the importance of paying her bills.”
- 24 32. One of Defendant’s telephone calls was placed to her cellular telephone at
25 2:00 AM.
- 26 33. On or about July 24, 2008, Defendant began contacting Plaintiff at her place
27 of employment, despite her instruction that Defendant cease such contact.
- 28

- 1 34. During this time, Defendant placed several telephone calls and voicemails to
2 Plaintiff at her place of employment without any meaningful disclosure as to
3 the company name used by Defendant or that Defendant was a debt collector.
4 35. During Defendant's telephone calls to Plaintiff at her place of employment,
5 Defendant threatened to speak with her employer to "make things hard" for
6 her. Defendant also threatened to ruin Plaintiff's credit by negatively
7 reporting the alleged debt because "employers do credit checks now."
8 36. On or about July 28, 2008, Defendant contacted Plaintiff by telephone at her
9 place of employment, and informed her that it knew her employers, and had
10 "no problems making [her] check disappear and then [she] would have a
11 pretty hard time."
12 37. Defendant continued to contact Plaintiff at her place of employment,
13 eventually speaking with an administrative assistant by posing as a patient
14 with a complaint. Plaintiff's supervisors were informed of the incident(s) and
15 Plaintiff was reprimanded. Plaintiff was also warned that there were be
16 consequences if Defendant's harassment interfered with her employment.
17 38. Defendant frequently filled Plaintiff's voicemail box at her place of
18 employment, requiring her to listen to Defendant's abusive and harassing
19 telephone messages.
20 39. On August 4, 2008, Defendant contacted Plaintiff by telephone five (5) times.
21 40. One of Defendant's telephone calls to Plaintiff was picked up by Plaintiff's
22 minor daughter. Although Plaintiff's daughter informed Defendant that she
23 was not Plaintiff, Defendant insisted that she was, and stated, "I am calling to
24 see if you plan on taking care of the lawsuit we served on you today before
25 we start garnishing your wages." Plaintiff's daughter informed Defendant
26 that she did not know who Defendant was. Defendant replied, "This is Mr.
27 Harris, and you won't forget me." Defendant's statement was false,
28

HYDE & SWIGART
San Diego, California

1 misleading, and misrepresented the legal status of the alleged debt as
2 Defendant had not yet filed any lawsuit against Plaintiff.

- 3 41. Defendant contacted Plaintiff by telephone nineteen (19) times between July
4 24, 2008, and August 25, 2008, despite Plaintiff's demands that Defendant
5 cease contact by telephone pursuant to her December 26, 2007 letter.
- 6 42. On several occasions during Defendant's telephone calls to Plaintiff,
7 Defendant's representative, "Mr. Harris," and/or "Jason," informed Plaintiff
8 that he would "see to it that [she] lose sleep over this," and that he would call
9 "anytime of the day and [she] couldn't prove it [because] the call was
10 blocked." Defendant's representative reiterated the threat to send people to
11 Plaintiff's home to "make sure [her] bosses know that [she is] not worth
12 having there [because she] doesn't pay her bills."
- 13 43. Defendant's continued communication to Plaintiff in an attempt to collect the
14 alleged debt after Defendant was notified in writing that Defendant was to
15 cease further communication with the Plaintiff in a manner consistent with the
16 requirements in 15 U.S.C. § 1692c(c). Consequently, Defendant violated 15
17 U.S.C. § 1692c(c). Because this action violated the language in 15 U.S.C. §
18 1692c(c), Defendant also violated Cal. Civ. Code § 1788.17.
- 19 44. Defendant's statements to Plaintiff were false, deceptive, or misleading
20 representations or means in connection with the collection of the alleged debt.
21 As such, this action by Defendant violated 15 U.S.C. §§ 1692e and
22 1692e(10), and because this action violated the language in 15 U.S.C. §§
23 1692e and 1692e(10), it also violated Cal. Civ. Code § 1788.17.
- 24 45. On or about August 25, 2008, Defendant, on behalf of LVNV Funding, LLC,
25 filed a lawsuit against Plaintiff in the Superior Court of California, County of
26 San Diego, Case No. 37-2008-00057836-CL-CL-NC, in the amount of
27 \$13,575.45.

HYDE & SWIGART
San Diego, California

46. Due to Plaintiff's defense of the state action, Defendant requested a dismissal on behalf of its client, LVNV Funding LLC, on June 22, 2009, which the court granted on June 24, 2009.

COUNT I

FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)

15 U.S.C. §§ 1692 ET SEQ.

47. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.
48. The foregoing acts and omissions constitute numerous and multiple violations of the FDCPA, including but not limited to each and every one of the above-cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq.
49. As a result of each and every violation of the FDCPA, Plaintiff is entitled to any actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and, reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from Defendant.

COUNT II

ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT (RFDCPA)

CAL. CIV. CODE §§ 1788-1788.32

50. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.
51. The foregoing acts and omissions constitute numerous and multiple violations of the RFDCPA, including but not limited to each and every one of the above-cited provisions of the RFDCPA, Cal. Civ. Code §§ 1788-1788.32

52. As a result of each and every violation of the FDCPA, Plaintiff is entitled to any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory damages for a knowing or willful violation in the amount up to \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable attorney's fees and costs pursuant to Cal. Civ. Code § 1788.30(c) from Defendant.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendant, and Plaintiff be awarded damages from Defendant, as follows:

- An award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
 - An award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
 - An award of costs of litigation and reasonable attorney's fees, pursuant to 15 U.S.C. § 1692k(a)(3);
 - An award of actual damages pursuant to California Civil Code § 1788.30(a);
 - An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b);
 - An award of costs of litigation and reasonable attorney's fees, pursuant to Cal. Civ. Code § 1788.30(c).

53. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Date: 8/2/27

Hyde & Swigart

By:

Joshua B. Swigart
Attorneys for Plaintiff

JS 44 (Rev. 12/07) CIVIL COVER SHEET
The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Heather Rowell

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Hyde & Swigart
411 Camino Del Rio South Suite 301, San Diego, CA 92108**DEFENDANTS**

Law Office of Robert B. Serian

County of Residence of First Listed Defendant Los Angeles
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

'09 CV 1770 JM

RBB

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- | | |
|--|---|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity
(Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

- | | | | | | |
|---|------------------------------|------------------------------|---|------------------------------|------------------------------|
| Citizen of This State | <input type="checkbox"/> PTF | <input type="checkbox"/> DEF | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> PTF | <input type="checkbox"/> DEF |
| Citizen of Another State | <input type="checkbox"/> 1 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 6 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 4 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 7 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY		<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	PROPERTY RIGHTS	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	SOCIAL SECURITY	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 861 HIA (1395ft)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract			<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 864 SSID Title XVI	<input checked="" type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	FEDERAL TAX SUITS	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	Habeas Corpus:	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty		<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights		<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- | | | | | | | |
|---|---|--|---|--|---|--|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from another district (specify) _____ | <input type="checkbox"/> 6 Multidistrict Litigation | <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment |
|---|---|--|---|--|---|--|

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. § 1692 et seqBrief description of cause:
FDCPA**VII. REQUESTED IN COMPLAINT:** CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # 4195 AMOUNT \$350.00

APPLYING IPP _____

JUDGE _____

MAG. JUDGE _____

MS 8/13/09

ORIGIN

CP

Court Name: USDC California Southern
Division: 3
Receipt Number: CAS004195
Cashier ID: msweeney
Transaction Date: 08/13/2009
Payer Name: HYDE AND SWIGART

CIVIL FILING FEE
For: ROWELL V L/O ROBERT SERIAN
Case/Party: D-CAS-3-09-CV-001770-001
Amount: \$350.00

CHECK
Check/Money Order Num: 3318
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

There will be a fee of \$45.00
charged for any returned check.